Supreme Court, U.S.
FILED
AUG 12 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1990

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WEST 14TH STREET COMMERCIAL CORP.,
WEST 14TH STREET GARAGE CORP., AND
WEST 14TH STREET LAUNDRY CORP.,

Petitioners,

v.

5 WEST 14TH OWNERS CORP.,

Respondent.

PETITIONERS' REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

Petitioners respectfully submit this Reply Brief to address the respondent Cooperative's contention that this case presents simple, straightforward issues of statutory construction of no major importance to the future development of cooperatives and condominiums in this country. Contrary to respondent's contention, this case involves much more than a dispute over garage spaces in Manhattan.

The result which the Second Circuit reached — that parties to a conversion cannot negotiate for leasehold interests in certain cooperative and condominium related property — impacts the interests of all parties involved in future conversions. For, as the respondent's brief freely concedes (Resp. Br. at 8-9), there are

simple ways for the developer to avoid the impact of the Condominium and Cooperative Abuse Relief Act: instead of reserving a leasehold estate, the developer could either reserve a fee interest, or it may sell the entire building, and simply charge a higher price. That result will saddle all future cooperatives and condominiums with a more onerous form of developer control — a fee as opposed to a leasehold interest — if the first option is chosen. If the developer charges a higher price, thousands of potential property owners may be priced out of the market, thus adversely impacting on an important social policy: the desirability of every person having the opportunity to own their home.

The respondent Cooperative's response completely ignores these serious social concerns. Nor does the Cooperative address the utter irrationality of the statutory scheme, as interpreted by the Second Circuit; a lease is subject to the statute, and a fee interest is not.

The importance of this case cannot be assessed by the exact number of cases pending or by whether there is a conflict in the circuits. However, as a practical matter, the Second Circuit's opinion will set policy on this important area of housing law for the entire country. Because the values of these properties are so enormous, no attorney could properly advise a client to accept a leasehold interest in condominium or cooperative related property in any part of the country, no matter how much better a lease would fit the economic needs of the parties.[1] Any developer outside of New York would be reckless in creating such a lease, as it would be wagering millions on whether another court would follow or reject the Second Circuit's holding. No rational person would be likely to take these risks. For these reasons, this case is

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[1] In the District Court, the Cooperative estimated that the income value of the garage was more than $150,000 per year. (JA 249). During the term of the lease, twenty years, the garage lease is thus valued at more than $3,000,000. Because the income from these properties is so great, developers frequently create a lease to prevent the cooperative from running afoul of Section 216 of the Internal Revenue Code. That provision allows cooperative shareholders to deduct interest and real estate taxes paid by the cooperative only if 80% of the cooperative's gross income is derived from the shareholders' maintenance payments. I.R.C. §216 (1986).

not about a garage on West 14th Street in Manhattan. This case sets national policy.

On the merits, the Cooperative creates its own rationale and completely abandons the Second Circuit's rationale for holding that Section 3607 of the Abuse Relief Act does not apply to leases. The Second Circuit did find a conflict between the provisions of Section 3607, which provided for prospective, non-judicial termination of "contracts", and Section 3608, which provided for retroactive, judicially enforced termination of a very narrow category of recreational leases from the developer to the cooperative. The Second Circuit resolved this conflict by judicially rewriting Section 3607 so that it was applicable only to leases from the cooperative to the developer, and not to leases in the other direction. 815 F.2d at 197 (App. A., 18a). With the statute judicially rewritten, there is no conflict.

The Cooperative recognizes that there is a flaw in this logic, since Congress did not write the statute in this way. If the statute applies to leases, it clearly applies to leases in either direction. Instead, the Cooperative simply pronounces that there is no conflict — a position that cannot withstand scrutiny. Congress rejected an attempt to make Section 3608 prospective. The proposal rejected would have required the cooperative or condominium to prove that the lease was unconscionable, the central requirement under Section 3608. S. Rep. No. 736, 96th Cong., 2d Sess. 172, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3506, 3717.

The Cooperative intentionally ignores Congress' rejection of that proposal and simply contends that what cannot be done with respect to a lease under Section 3608 can be done under Section 3607. The entirely illogical results of such an interpretation are obvious. A lease of recreational space — the specific type of lease subject to Section 3608 — is clearly a lease of property "serving" the unit owners within the meaning of Section 3607. A holding that Section 3607 applies to leases would allow virtually every cooperative or condominium affected by a recreational lease to terminate the lease without a hearing, and without any showing of unconscionability. Such a holding would violate one of the most basic rules of statutory construction:

namely, that "[g]eneral language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment." *D. Ginsberg & Sons, Inc. v. Popkin,* 285 U.S. 204, 208 (1932).

The Abuse Relief Act is susceptible to the simple analysis advanced by the Cooperative only if one disregards the legislative history and elementary rules of statutory construction. The Second Circuit's error will distort Federal policy in the condominium and cooperative field throughout the nation. Because of the national implications of the error, this case is particularly suited for review.

Respectfully submitted,

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August 11, 1987